Bell Atlantic Network Services, Inc.
1320 N. Courthouse Road, 8th Floor
Arlington, VA 22201
Voice: (703) 974-7699
Fax: (703) 974-0259
Internet: Jennifer.Hoh@bellatlantic.com

Jennifer Lynn Hoh
Legal Department

ORIGINAL

January 25, 1999

Ms. Sheryl Todd
Common Carrier Bureau
Federal Communications Commission
2100 M Street, N.W.
Room 8606
Washington, DC 20554

Re: **Reply Comments of Bell Atlantic**
CC Docket Nos. 96-45

Dear Ms. Todd:

On behalf of Bell Atlantic, enclosed please find one 3.5 IBM compatible computer diskette containing Bell Atlantic's Reply Comments in the above-referenced matter.

Please call if you have any questions concerning the enclosed materials.

Sincerely,

Jennifer L. Hoh

Enclosures

No. of Copies rec'd 0+5
List ABCDE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Federal-State Board on Universal Service

CC Docket No. 96-45

REPLY COMMENTS OF BELL ATLANTIC[1]

Most commenters agree that the Commission should minimize the burden of identifying interstate revenues by wireless carriers by allowing them to use a fixed interstate factor, but that the Commission should allow individual wireless carriers to use different factors if they can substantiate their actual interstate percentages. There also is general agreement that the Commission should not adopt a specific amount of local usage that must be offered by a carrier to receive high cost support. The Commission should avoid any action that would impede the ability of both wireline and wireless carriers to tailor their local pricing plans to the diverse needs of their customers in each state.

[1] The Bell Atlantic companies participating in this filing ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; New England Telephone and Telegraph Company; and Bell Atlantic Mobile, Inc.

I. There Is Overwhelming Support For A Single "Safe Harbor" Percentage Of Interstate Use That All Wireless Carriers Could Use Unless They Opt To Submit Individual Traffic Studies.

There is nearly unanimous support for the Commission to adopt a permanent "safe harbor" percentage that wireless carriers could use to identify their interstate revenues for contributions to the high cost fund. ***See, e.g.***, CTIA at 3; PCIA at 5-6; Airtouch at 1; SBC at 2-3. Unlike wireline carriers, wireless carriers do not identify the jurisdiction of their revenues in the normal course of business, and it is extremely difficult for them to do so given the mobility of their customers. ***See, e.g.,*** Sprint PCS at 2; Omnipoint at 2-3. It would be unduly burdensome to require all wireless carriers to conduct traffic studies to estimate their individual percentages of interstate revenues.

Many commenters agree with Bell Atlantic that the Commission should adopt a single factor that all wireless carriers could use to identify their interstate revenues, regardless of whether they offer cellular, paging, or other types of wireless services. ***See, e.g.,*** CTIA at 3; GTE at 9. The Commission should base this factor on information that has already been submitted, rather than require the industry to conduct new traffic studies. ***See*** Sprint PCS at 5. The commenters who support different factors for different types of wireless carriers fail to recognize that carriers within any particular classification still have widely varying service areas, making any attempt at precision a futile exercise. If a wireless carrier believes that the standard factor does not adequately represent its actual percentage of interstate traffic, it should have the option of submitting its own data, such as a traffic study, to justify using a different factor. ***See, e.g.,*** Airtouch at 2-5; AT&T at 2-5.

The Commission should not adopt the proposals of some commenters (e.g., PCIA at 9; Nextel at 8) that carriers should be required to obtain waivers if they want to depart from the standard factor. The waiver process is burdensome for both applicants and the Commission's staff, and waivers typically take months, if not years, to obtain. Carriers should be allowed to submit different percentages based on their own internal studies without prior approval. A carrier that uses its own factor should be required to substantiate it upon request by the Commission's staff or by the universal service fund administrator.

The Commission should not accept the proposals of some commenters to make this issue moot by adopting the supposed "recommendation" of the Joint Board to assess contributions to the high cost fund based on both state and interstate revenues. ***See, e.g.,*** AT&T at 2-3; BellSouth at 3; NTCA at 2-3. First, the Joint Board made no such recommendation. In its Second Recommended Decision, the Joint Board merely stated that if the Court's decision in the pending appeal of the Commission's Universal Service Order permits, the Commission "may wish to consider" a non-jurisidictional assessment, or that it "could consider" other alternatives, such as a flat, per-line assessment. ***See*** Second Recommended Decision (rel. Nov. 25, 1998) at ¶ 63. These non-committal statements hardly qualify as a recommendation by the Joint Board that assessing total revenues is in the public interest.

Second, an assessment based on total interstate and intrastate revenues would exceed the Commission's statutory authority, as Bell Atlantic explained in its comments on the Second Recommended Decision. ***See*** Bell Atlantic Reply Comments at 6-7 (filed Jan. 13, 1999) (attached). And as a policy matter, it would severely interfere with the

ability of the states to fund their own intrastate universal service mechanisms, as the practical effect would be to limit the amount that states could assess on the same revenues.

Finally, the asserted difficulty of identifying interstate revenues, which is easily remedied in the case of wireless carriers by adopting a fixed percentage, is not a sufficient reason to revisit the Commission's decision to assess high cost funding solely from the interstate revenue stream.

II. The Commission Should Not Prescribe The Amount Of Local Usage That Should Be Included In A Basic Service Package.

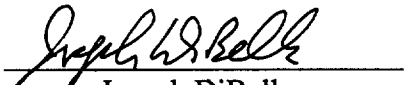
Most commenters agreed with Bell Atlantic that the Commission should not adopt any specific amount of local usage that should be included in a basic service package for a carrier to be eligible to receive high cost support. ***See, e.g.,*** Sprint PCS at 7-16; Ameritech at 4-6; Omnipoint at 9-10. A federally-mandated minimum usage requirement would interfere with the authority of states over pricing by wireline carriers, and it would inhibit the ability of carriers to compete with innovative pricing plans designed to meet the needs of their customers. The Commission should allow the market to decide which particular combinations of fixed and measured rates consumers find most desirable.

It would harm both wireless and wireline carriers if the Commission adopted proposals by some commenters (e.g., US West at 10-13, 17; Ohio Consumers' Council at 2-4) to require carriers to offer basic service packages with unlimited local usage as a prerequisite to obtaining high cost support. For all practical purposes, this would exclude wireless carriers from universal service funding, as their costs are almost entirely traffic

sensitive. For this reason, it is not feasible for wireless carriers to offer unlimited usage at an affordable rate. Even wireline carriers do not have unlimited local calling plans in all jurisdictions, contrary to US West's assertion. ***See*** US West at 17. Similarly, the proposals to establish a minimum usage requirement based on the nationwide average landline usage (e.g., NTCA at 6-7; Ohio Consumers' Council at 5-7) would place wireless carriers at a disadvantage, as their costs for the same amount of usage are much higher than a landline carrier's. Also, such a rule would require revision of local telephone rates in many states. This would contravene Section 2(b) of the Act, which strictly prohibits the Commission from jurisdiction over, or "with respect to," intrastate services. ***See*** 47 U.S.C. Section 152(b).

As a matter of both law and policy, therefore, the Commission should refrain from prescribing the amount of local usage that carriers must offer to be eligible for high cost support.

Respectfully submitted,



Joseph DiBella
1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-6350

Attorney for the Bell Atlantic companies

Michael E. Glover
S. Mark Tuller
Of Counsel

Dated: January 25, 1999

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	DA 98-2410

REPLY COMMENTS OF BELL ATLANTIC[1]

The comments on the Joint Board's Second Recommended Decision overwhelmingly confirm four key points: that the Commission's proxy model continues to suffer from serious defects and cannot be used to determine universal service support; that the size of the existing federal high cost fund is sufficient to ensure that local rates remain affordable; that the Commission may not lawfully base assessments for payment into the federal high cost fund on intrastate revenues; and that carriers should be permitted to recover their contributions through charges on end user bills.

1. Not one of the parties who filed comments on the Joint Board's recommendations supports adoption of the Commission's current cost proxy model. Even those who favor use of forward-looking models concede that the present iteration is not ready for prime time, as it has numerous technical and methodological flaws and has not been adequately tested.

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

Moreover, no party has been able to assess the impact of the model on the distribution of high cost support.

As Bell Atlantic previously demonstrated, the model produces unexplained anomalies by calculating line counts that vary by as much as 100% from the actual numbers of lines in a wire center, and by producing hypothetical loop lengths that vary widely from the actual loop lengths. *See* Comments of Bell Atlantic on Model Platform (filed Aug. 28, 1998) ("Bell Atlantic's Model Comments"). Given the lack of information about the Commission's model or the inputs that will be used, only a very limited analysis of the results of the proxy model has been possible. But based on an analysis of the proxy models from which the Commission's platform was derived, it is clear that the proxy models produce large, unexplainable, shifts in universal support by state. *See* Bell Atlantic's Petition for Reconsideration at 3 (filed Dec. 18, 1998). These data demonstrate that no model platform, and certainly not the Commission's current model, has yet been shown to have the ability to identify accurately high cost areas.

In addition, the input information that would enable Bell Atlantic to conduct further verification of the Commission's model remains proprietary. Even though Bell Atlantic has agreed to comply with the Commission's standard protective order and has submitted declarations from those who will analyze the data, Bell Atlantic has not yet received any relevant

data from PNR, the company that has been working with the Commission, that would allow it to attempt to verify the model's outputs for this filing.[2]

At the very least, once a fully-functional version of the model, together with a complete set of inputs, is made publicly available, the Commission should refer it to the Joint Board for review and public comment. As the Joint Board (at ¶ 29) recommended, and a number of state commissions agreed, given the inherent flaws in the current model, and in the absence of a full opportunity to comment on and correct that model, the Commission should retain the present method of funding high cost areas when it implements the new universal service fund mechanism on July 1, 1999.[3]

2. The comments also demonstrate broad agreement that the existing high-cost fund size is sufficient to meet the statutory guidelines. Based on the Joint Board's own finding (at ¶ 39) that rates today are affordable and subscribership high,[4] it is readily apparent that there is no need to shift large sums among states to support rates that are already reasonable. *See, e.g.*,

---

[2] Bell Atlantic hopes to obtain at least some data from PNR in the near future, but relevant data should have been available to allow commenters to validate the model well before the Commission adopted it. By adopting the model without providing parties the data needed to evaluate and comment on the proposal, the Commission violated the requirements of the Administrative Procedure Act. *See* Bell Atlantic's Petition for Reconsideration at 2-7; *ex parte* letter dated Nov. 20, 1998 to Larry Strickling, Chief, Common Carrier Bureau, from Frank Gumper, Bell Atlantic.

[3] *See, e.g.*, Maryland PSC et al. at 14-15, Rural States at 8, Pub. Util. Comm'n Ohio at 3.

[4] The Commission has recently confirmed that subscribership levels have continued to remain high, with nationwide penetration over 94%. Alexander Belinfante, Industry Analysis Div., FCC, *Telephone Subscribership in the United States* at 2 (Dec. 1998).

Maryland PSC et al. at 5-7, California at 5, CompTel at 2-3.[5] Instead, as the Joint Board recommends, states that can maintain affordable rates in high-cost areas through their own universal service programs should not be subsidized by consumers in other states. *See* Joint Board at ¶¶ 36-40.

Consistent with maintaining the existing overall amount of high-cost support, many parties support adoption of the Joint Board's recommendation to base costs on areas no smaller than study areas. *See, e.g.*, AT&T at 4-5,[6] Colorado PUC at 3 (which urges use of total state-wide costs), Vitelco at 9-10.[7] Using larger areas to measure costs would average high- and low-cost areas within a state and pinpoint which states require help from ratepayers in other states to ensure that rates remain affordable. Then each individual state, through its intrastate ratemaking process, can provide for any needed support to its own high-cost areas.

---

[5] CompTel argues that the high cost fund should be used to defray the cost to local carriers of combining unbundled network elements. CompTel at 4-5. This is an issue relating to the pricing of such elements under sections 251 and 252 of the Act and has nothing to do with providing support to high cost geographical areas to maintain affordable rates.

[6] AT&T also reprises its oft-made argument that certain large incumbent exchange carriers should receive no high cost support until they have opened their markets to competition. AT&T at n.2. AT&T utterly ignores the fact, however, that Congress's purpose in adopting the Act's universal service provision was to keep rates affordable, not to reward or punish carriers. Denying universal service support to any eligible carrier in a high cost state would be inconsistent with that purpose. *See* 47 U.S.C. § 254(b)(1). What's more, in Bell Atlantic's case, its local markets are open to competitive entry, and other carriers are already serving well over one million lines.

[7] One coalition of state commissions would superimpose a means test on high-cost funding to ensure that support goes only to those ratepayers who otherwise could not afford telephone service but do not qualify for lifeline service. *See* Maryland PSC et al. at 11-13. While that proposal has merit, the implementation at the federal level could be overly expensive and intrusive. The Commission should at least not preclude states from including a means test in their high-cost programs.

In addition, the most serious infirmities of each proposed cost proxy model, including the current Commission model, are revealed when costs are disaggregated below the study area level. As a result, the models are inherently incapable of meeting the Commission's own goal of calculating costs accurately at the wire center level, and may be usable, at best, only at the study area level. *See* Bell Atlantic's Model Comments at 8-9. This is because, as a result of averaging, the models' output may approximate actual loop lengths at a high level of aggregation, but not at the wire center or other disaggregated level. *See id.* at 9. Accordingly, if the Commission continues to use a cost proxy model for universal service, aggregating costs at least at the study area level will mitigate some of the model's infirmities.

The Commission also should not inflate the size of the fund by holding states or carriers "harmless" by continuing to provide high cost support to those states which, under the Commission's formula, do not have high costs. Instead, if the Commission is concerned that immediate elimination of existing high cost support would cause rate shock, it should specify a phase-out period and reduce the support over that period, as several parties propose. *See, e.g.*, Iowa Pub. Util. Bd. at 9-10, MCI WorldCom at 17, New York PSC at 4-5.[8]

Nor should the federal high cost fund be inflated just to further reduce interstate access rates, as many interexchange carriers want. *See, e.g.*, MCI WorldCom at 3-9, TRA at 4, CompTel at 3-4. The purpose of the high cost fund is "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e).

---

[8] The Commission should also take into account the rate shock that would occur if the contribution by carriers in a given state into the high cost fund were to increase sharply. To avoid such sudden rate increases, one state commission proposed another form of "hold harmless" – not allowing the high cost fund contribution of carriers within any state to increase. *See* D.C. PSC at 4-5.

Those services, which the Commission has defined pursuant to section 254(c)(1), are all local services. *See* 47 C.F.R. § 54.101(a). Using the high cost fund simply to reduce interstate access charges would not ensure that the contributions are used to reduce local service rates, as the Act requires. Accordingly, high cost funds should be paid to local carriers or states to be used as Congress intended, to keep local rates affordable.

3. There is no reason for the Commission to revisit its earlier conclusion that only interstate revenues should be assessed for the high cost fund. As Bell Atlantic and other parties fully demonstrated in their opening comments, the Commission may not lawfully, consistent with section 2(b) of the Act, and should not, consistent with sound public policy, assess contributions based on intrastate revenues. *See* Bell Atlantic at 7-11. *See also, e.g.*, California at 7-11, Illinois Comm. Comm'n at 5-7, Pub. Util. Comm'n Ohio at 8.

Some parties argue that section 2(b) of the Act does not prohibit the Commission from basing federal universal service fund contributions on intrastate revenues or any other measure, because the carriers recover their contributions through interstate services. Therefore, the argument goes, such an assessment does not affect intrastate rates. *See, e.g.*, AT&T at 6,[9] GTE at 30-32, GSA at 5-6. Those parties are wrong. The Act prohibits the Commission from exercising jurisdiction "with respect to" intrastate services. *See* 47 U.S.C. § 152(b) (emphasis added). Adopting a regulation that assesses contributions from carriers based upon the revenues those carriers receive from intrastate services is without doubt exercising jurisdiction "with

[9] AT&T claims that the Joint Board "recommends" that the Commission consider assessing intrastate as well as interstate revenue. It does not. The Joint Board merely tentatively suggests that the Commission "consider" revisiting this issue depending upon the outcome of pending appellate litigation. *See* Joint Board at ¶ 63.

respect to" those services, even if such assessment does not directly affect the rates for those services.

In addition, Congress spelled out in section 254 that the interstate fund should be funded by providers of interstate services and any intrastate fund should be funded by providers of intrastate services. *See* 47 U.S.C. § 254(d) and (f). It would be inconsistent with those provisions for the Commission to assess the revenues that carriers derive from intrastate services, just as states may not tap interstate revenues for their funds.

From a policy perspective, if the Commission were to attempt to assess intrastate revenues for the federal fund, such action would directly interfere with the ability of the states to fund their own intrastate universal service policies. This is because the states would need to assess intrastate revenue that has already been assessed for the interstate fund – in effect, taxing the same revenues twice. But from a practical standpoint, there is a limit to how much of a levy any revenue stream can bear, and federal assessment of intrastate revenues necessarily would limit the amount of the assessment that the states can add. This, in turn, would serve to reduce the revenue base that states have available to fund their own universal service programs and limit the states' ability to satisfy their primary responsibility to preserve universal service and affordable local rates.

4. Finally, carriers should be permitted to recover their universal service contributions through separate line items or surcharges on end user bills, as many parties propose. *See, e.g.*, GTE at 32, AT&T at 9-10, USTA at 10-11. This will ensure that consumers are fully aware of which part of their payments are for the service they are receiving and which are to meet federal universal service policies. The surcharges should be identified in a manner that is not misleading, just as other fees are identified clearly today (*e.g.*, 911 and TRS fees).

However, so long as the explanation of those line items is clear, the Commission should not attempt to micro-manage the specific wording that appears on the bill.

Accordingly, the Commission should revise its universal service policies and rules consistent with Bell Atlantic's initial comments and with this reply.

Respectfully Submitted,

Lawrence W. Katz
1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-4862

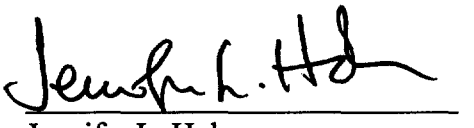
Attorney for the Bell Atlantic
Telephone Companies

Michael E. Glover
Of Counsel

January 13, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 1999, an original and 4 copies of the foregoing "Reply Comments of Bell Atlantic" was served upon the Secretary and a copy was sent by first class mail, postage prepaid, to the parties on the attached list.



Jennifer L. Hoh

* Via hand delivery.

Sheryl Todd
Accounting Policy Division
Federal Communications Commission
2100 M St., N.W.
8th Floor
Washington, DC 20544
(3 copies and Diskette)

ITS*
1919 M Street, NW
Room 246
Washington, DC 20554
(Paper copy + Diskette)